IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA

CASE NO: 2023-025197-CA-01
SECTION: CA30
JUDGE: Reemberto Diaz

Bryan Calvo

Plaintiff(s)

vs.

Esteban Bovo, Jr.

Defendant(s)

_____/

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS COMPLAINT WITH PREJUDICE

This matter came before the Court on Defendant*'s Motion to Dismiss Plaintiff's Complaint with Prejudice, and Motion to Strike Plaintiff's Demand for Attorneys' Fees and Costs*. The Court having reviewed the Motion, Plaintiff's Response, and having heard oral argument of counsel at an in-person hearing on January 8, 2024 at 9:00 a.m., it is hereby,

ORDERED the Motion to Dismiss the Complaint with prejudice is **GRANTED.** The Motion to Strike Plaintiff's Demand for Attorney's and costs is moot and therefore **DENIED**.

INTRODUCTION

Plaintiff Bryan Calvo, one of seven councilmembers for the City of Hialeah, sued Defendant Esteban Bovo, Jr., Mayor for the City of Hialeah claiming Mayor Bovo's policies are unlawful and violate Plaintiff's rights as councilmember under the Hialeah City Charter and Code of Ordinances. Compl. ¶ 3. Plaintiff claims he has been frustrated in his ability to investigate, inquire, and raise issues at City Council meetings by Mayor Bovo's administrative polices. Hr'g Trans. 20:16-25. However, the allegations in the Complaint admit that Plaintiff has extensively exercised his duties as a councilmember but has been constrained by the legislative prerogatives of

his colleagues on the City Council. Compl. ¶¶30-31; 33; 35-36; 45-46. The Court is without jurisdiction to interfere in the internal legislative decision making of Hialeah's City Council. For this and the reasons set forth below, Plaintiff's Complaint is dismissed with prejudice.

Plaintiff points to three specific policies, all of which have been adopted by the City Council (*See* Resolution No. 2023-157, Section (I)(B) in Order, *infra*), he alleges violate his rights as councilmember. *First*, the Mayor's Administrative Protocol dated September 1, 2022, directing councilmembers to make requests for city resources or city department assistance to the Mayor in writing. *Second*, the City Attorney's Legal Opinion[1] dated July 18, 2023, opining that an individual councilmember may not conduct an inquiry or investigation into the conduct of a department or any other municipal affair. *Third*, the City Attorney's Legal Opinion dated September 11, 2023, opining that an individual councilmember must follow Section 30-31 of the Code of Ordinances to place items on the agenda for City Council meetings. These three documents will be referred to collectively as "Memoranda." Plaintiff seeks declaratory judgment relief as to whether the Memoranda violate his rights as councilmember in Counts 1, 3, and 5. Plaintiff further seeks to permanently enjoin enforcement of the Memoranda alleging his rights are violated as councilmember in Counts 2, 4, and 6.

The City of Hialeah is a municipality, "and the paramount law of a municipality is its charter." *Burns v. Tondreau*, 139 So. 3d 481, 484 (Fla. 3d DCA 2014) . The Complaint admits that "Hialeah's City Charter and Code of Ordinances are its ultimate governing documents." Compl. ¶ 11. Hialeah has a Strong Mayor-Council form of government meaning the "mayor serves as the city's political head, administering the city government and enforcing laws passed by the city council." Compl. ¶ 12.

The legislative body of Hialeah is the City Council, "a seven-member body of elected officials, [which] enacts legislation, investigates and inquires into municipal affairs, oversees the mayor, and authorizes the municipal budget." Compl. ¶ 12. Hialeah's Charter ("Charter") and its

Code of Ordinances ("Code") also "give the mayor the power to appoint all department heads for the city" including the city attorney and city clerk. Compl. ¶ 16. The city attorney is "under the mayor's direct supervision" and serves as the "'principal legal advisor of the city and the administrative head of the law department.'" Compl. ¶ 17; Charter § 4.03(a); Code § 2-147. The city clerk is also under the mayor's direct supervision, and "maintains all official city records and sets the agenda for city council meetings." Compl. ¶ 18; Charter §§ 4.01-4.02; Code § 2-117.

This dispute concerns certain policy decisions made by the City Council to address issues within the 911 call center. Plaintiff claims the Memoranda violate his rights as councilmember under three main provisions of the Charter and Code, specifically: Charter § 2.02(a)(6), § 3.02(b), and Code § 30-31.

First, Charter § 2.02(a)(6) states:

> Section 2.02. - City Council.
>
> (a) Powers and duties. The City Council shall have the following powers and duties:
>
> * * *
>
> (6) To inquire into the conduct of any municipal office, department, agency or officer and to investigate municipal affairs, and for that purpose, may subpoena witnesses, administer oaths and compel the production of books, papers or other evidence.

Plaintiff claims his rights as a councilmember are violated because he cannot inquire and investigate into municipal affairs or compel records. Compl. ¶ 68. The City Council formally declined to initiate or pursue this particular investigation. Comp. ¶ 35. Plaintiff cites to Charter § 2.02(a)(6) as a basis to seek relief from this Court, but a plain reading of the Charter contradicts his allegations because it plainly does not grant *individual* councilmembers the power to conduct inquiries or investigations. Instead, the language of the Charter is clear that the power to conduct an inquiry or investigation rests with the City Council as the legislative body, not with individual

councilmembers.

Second, Charter § 3.02(b) states:

Section 3.02. - Prohibitions.

* * *

> (b) Interference with administration. Except for the purpose of inquiries and investigations made in good faith, the city council or councilmembers shall deal with city officers and employees, who are subject to the direction and supervision of the mayor, solely through the mayor. Neither the city council nor councilmembers shall give orders to any such officer or employee, either publicly or privately. It is the express intent of this charter that recommendations for improvement of municipal governmental operations by individual councilmembers be made solely to and through the mayor.

Plaintiff claims his rights are violated because he cannot circumvent the Mayor when dealing with city officers or city employees. The applicable language states that both City Council and councilmembers are prohibited from interfering with administration requiring that all dealings with city officers and employees, "who are subject to the direction and supervision of the mayor" be done "solely through the mayor." *See* Charter § 3.02(b). Plaintiff cites to Charter § 3.02(b) as a basis for relief in each count of the Complaint, but a plain reading of the Charter contradicts his allegations because it plainly does not authorize an individual councilmember to unilaterally the power to conduct inquiries or investigations that are not authorized by the City Council.

Third, Code § 30-31 states:

Sec. 30-31. - Agenda of city council meetings.

> (a) The city clerk shall supervise the preparation of the agenda for city council meetings. Agenda items shall be provided to city councilmembers not later than 96 hours prior to the meeting.
>
> (b) The city clerk shall furnish city councilmembers an agenda package

> that includes staff reports and memoranda and other information necessary to enable the city council to make an informed decision on individual items. The city clerk should provide a copy of a proposed resolution or ordinance on legislative matters to be decided.
>
> (c) The city clerk shall correct scrivener's errors that are discovered in ordinances, resolutions, council minutes and staff reports and promptly report all corrections to the city council. Scrivener's errors shall be such errors that may result from typographical, printing, grammatical or spelling mistakes; inadvertence; or other mistakes that do not change the intent of the document to be corrected.
>
> (d) Nonagenda items will only be considered upon an affirmative vote of at least four councilmembers.
>
> (e) Voting on all items shall be in rotational order.
>
> (f) The requirements set forth in subsections (a) and (b) of this section may be excused for special meetings and emergency meetings authorized by the Charter.

Plaintiff claims his rights are violated because he cannot individually add items to the agenda for City Council meetings. Compl. ¶¶ 101, 106. Under Code § 30-31, the city clerk supervises the preparation of the agenda for City Council meetings. Plaintiff also admits that the city clerk "sets the agenda" for City Council meetings. Compl. ¶ 18. "Nonagenda" items may be added "upon an affirmative vote of at least four councilmembers." Code § 30-31. Similarly, Plaintiff concedes that Hialeah is governed by its Code of Ordinances and his citation to Code § 30-31 contradicts any claim that he must be permitted to unilaterally include agenda items for consideration by the Council. This is especially true given that Plaintiff's own Complaint admits that he has raised issues for consideration by City Council to varying levels of legislative success. *See e.g.,* Compl. ¶ 33.

Plaintiff cites to Charter and Code sections that not only fail to support Plaintiff's requested relief, but contradict the allegations in his Complaint. Specifically, there is no support in the Charter for an individual councilmember to conduct an inquiry or investigation without approval of

the City Council, nor for a councilmember to bypass the mayor when dealing with city departments and administration. *See* Charter §§ 2.02(a)(6); 3.02(b). Similarly, the Code does not provide for individual councilmembers to unilaterally add an item to the agenda for City Council meetings. *See* Code § 30-31. The Court must dismiss the Complaint because the allegations are directly contradicted by the authorities cited in Plaintiff's own Complaint.

Additionally, Plaintiff alleges that Hialeah wrongfully withheld documents in response to his request for over 10,000 Hialeah records from the 911 call center. Compl. ¶¶35, 36. Plaintiff laments that Hialeah is following public records restrictions by reviewing the records for any confidential or exempt information under Florida Statutes, Chapter 119, before production. Compl. ¶44. Even though he acknowledges that Hialeah has agreed to review and redact the requested records and produce the records upon a payment of $6,679.00. Plaintiff still maintains he is entitled to the documents free of charge and without redaction. Compl. ¶¶ 37, 44, 45, 48.

Under Chapter 119 of the Florida Statutes, a civil action may be brought to enforce provisions of Chapter 119 consistent with and subject to the restrictions that Chapter places on confidential 911 records. *See generally* § 119.11. Fla. Stat. (2023). Instead of pursuing his claim for Hialeah 911 records under Chapter 119[2], Plaintiff alleges he is entitled to the documents without redactions and without fees. Plaintiff fails to allege how Chapter 119, however, does not apply to him or to Hialeah. His claim for unfettered access to Hialeah 911 records is not supported by any law or authority, and therefore, is legally insufficient and fails as a matter of law.

Further, not only does the language of the Charter, Code, and Florida Statutes Chapter 119 fail to support the relief sought, but Plaintiff's own allegations also undermine his claims. Although he alleges that the Memoranda allegedly prevent him from performing his duties as councilmember, his assertions in the Complaint demonstrate otherwise. Plaintiff admits that he was able to discharge his duties as a councilmember, but at most could not find legislative support for his initiatives. For example, Plaintiff

- Admits he toured the 911 call center on April 18, 2023 as "part of his duty to investigate and inquire into municipal affairs." Compl. ¶ 30
- Admits he met with the Mayor on April 24, 2023 to make his request for specific action regarding the 911 call center. Compl. ¶ 31;
- Admits he addressed his fellow councilmembers in the June 2023 City Council meeting and was able to "present all the evidence he'd gathered" on the 911 call center." ¶ 33.
- Admits he had opportunity to discuss his "first-hand observations of the call center" to the other councilmembers in the June 2023 City Council meeting. ¶ 33.
- Admits that the other councilmembers responded to the 911 call center evidence he presented and "downplayed the severity of the issue." ¶ 33.
- Admits that after he met with the Mayor and addressed the City Council regarding his perspective of the 911 call center, both the Mayor and City Council were "disinterest[ed] in the issue." ¶ 35.
- Admits that he received "many documents and reports" produced by the city clerk in response to his document request on the 911 call center issue. ¶ 36.
- Admits meeting with Mayor Bovo's staff on September 21, 2023 regarding his request for unredacted information on the 911 call center. ¶ 45.
- Admits having another meeting with Mayor Bovo on September 27, 2023 regarding his request for unredacted documents on the 911 call center. ¶ 46.

Plaintiff's assertions, which must be accepted as true at this stage of the proceedings, demonstrate his ability to perform his duties as councilmember, contradicting his own basis for requesting relief from the Court that he has been impeded from performing his duties as a councilmember.

When deciding a motion to dismiss, a "trial court must accept all factual allegations as

true." *Town of Miami Lakes v. Miami-Dade Cnty*., 337 So. 3d 868, 871 (Fla. 3d DCA 2022). The plaintiff, however, is not entitled to have the court accept as true conclusory assertions or summary claims as to the applicability of the facts alleged, otherwise no complaint would ever be insufficient and the exercise of examining a complaint for its compliance with the pleading rules on motion to dismiss would be meaningless. *See Barrett v. City of Margate*, 743 So. 2d 1160, 1162-63 (Fla. 4th DCA 1999) (a complaint "must set forth factual assertions that can be supported by evidence which gives rise to legal liability. It is insufficient to plead opinions, theories, legal conclusions or argument."); *See also Clark v. Boeing Co.*, 395 So.2d 1226 (Fla. 1981).

Although the Court is confined to the "[w]ell-pled facts alleged in the four corners of the complaint." *Lewis v. Barnett Bank*, 604 So. 2d 937, 938 (Fla. 3d DCA 1992), it does not review those four corners in a vacuum. Throughout the Complaint, Plaintiff references and quotes entire sections of the Charter and the Code.[3] *See generally* Compl. Plaintiff also includes the text of all three Memoranda in the body of his Complaint, in addition to other municipal documents and correspondence. Accordingly, in deciding the Motion, I have considered the documents Plaintiff relies upon and incorporates within the four corners of his Complaint as well as relevant sources of law. *See Veal v. Voyager Prop. & Cas. Ins. Co.*, 51 So. 3d 1246, 1249–50 (Fla. 2d DCA 2011) (relying on a document the complaint impliedly incorporated by reference when dismissing a complaint with prejudice); *see also One Call Prop. Servs. Inc. v. Sec. First Ins. Co.*, 165 So. 3d 749, 752 (Fla. 4th DCA 2015) (holding "where the terms of a legal document are impliedly incorporated by reference into the complaint, the trial court may consider the contents of the document in ruling on a motion to dismiss").

"Dismissal of a complaint with prejudice is proper where the complaint has failed to state a cause of action and it conclusively appears that the complaint could not be amended to state a cause of action." *Andreasen v. Kelin, Galsser, Park & Lowe, P.L.*, 342 So. 3d 732, 733-34 (Fla. 3d DCA 2022); *see also Crawley-Kitzman v. Hernandez*, 324 So. 3d 968, 977 (Fla. 3d DCA 2021)

("Dismissal of a complaint with prejudice should only be granted when the pleader has failed to state a cause of action and it conclusively appears there is no possible way to amend the complaint to state a cause of action.").

Here, the Complaint is legally insufficient as a matter of law and cannot be cured by pleading additional facts. As discussed below, dismissal with prejudice is necessary for all six counts because there is no basis for the Court to intervene in the dispute presented by Plaintiff's Complaint.

The Motion seeks dismissal with prejudice on five separate grounds: (i) lack of jurisdiction because of separation of powers doctrine; (ii) failure to state a claim for declaratory relief; (iii) failure to join a necessary and indispensable party; (iv) lack of standing to maintain suit in Plaintiff's official capacity; and (v) lack of jurisdiction to enjoin Hialeah's legislative process. For the reasons set forth below, dismissal with prejudice is warranted for each ground asserted.

A. **No Subject Matter Jurisdiction to Intervene in Municipality's Legislative Process.**

Plaintiff asks this Court to issue a ruling declaring the Memoranda violate his rights as a councilmember. He also asks this Court to prevent and enjoin the Memoranda from enforcement. To make such rulings, however, would require this Court to interfere with the decision-making process of another branch of government. Under the separation of powers doctrine, I have no jurisdiction to do so.

"A trial court may not interfere with and does not have authority to enter into the decision-making process which is delegated to" another branch of government. *Agency for Persons with Disabilities v. J.M.*, 924 So. 2d 1, 2 (Fla. 3d DCA 2005); *see also* Fla. R. Civ. P. 1.140(b)(1). "Unlike legal questions, political questions 'fall within the exclusive domain of the legislative and executive branches under the guidelines established by the Florida Constitution.'" *DeSantis v. Fla. Educ. Ass'n*, 306 So. 3d 1202, 1214 (quoting *Johnson v. State*, 660 So. 2d 637, 646 (Fla. 1995));

see also Merkle v. Guardianship of Jacoby, 912 So. 2d 595, 600 (Fla. 2d DCA 2005) ("[T]he limitation on the exercise of judicial power to the decision of justiciable controversies has been attributed to judicial adherence to the doctrine of separation of powers.") (citing *Ervin v. City of N. Miami Bch*., 66 So. 2d 235, 236 (Fla. 1953)).

The Court does not have jurisdiction to substitute its judgment for that of the City Council. "Instead, the issue presented is a political question best left to the legislative and executive branch of government." *Kunz v. School Bd. of Palm Beach Cnty.*, 237 So. 3d 1026, 1027 (Fla. 4th DCA 2018). Decisions as to how to expend municipal resources, procedures for legislative meetings, or whether to investigate a particular issue are the province of the City Council, not this Court. There is no legal authority to empower the judiciary to make these complex and difficult policy choices through a declaratory judgment action or a permanent injunction. Any amendments by Plaintiff to the Complaint would be futile because it cannot cure the lack of jurisdiction because there is no claim Plaintiff can plead to invite the Court to interfere in the internal deliberative process of the City Council. *See Kunz*, 237 So. 3d at 1029 (dismissing complaint with prejudice because plaintiff asked the "court to reach inside a system established by the legislature and direct the process be conducted in a different manner"). Indeed, Hialeah's "paramount law" is the Charter and this Court cannot override City Council's powers and duties granted in the Charter. "[A]rrogating such policy choices to the judiciary would do great violence to the separation of powers established in our Constitution." *Citizens for Strong Schools, Inc. v. Fla. State Bd. of Educ.*, 262 So. 3d 127, 143-44 (Fla. 2019) (Canady, C.J., concurring); *see also Baker v. Carr*, 369 U.S. 186, 210 (1962) ("The nonjusticiability of a political question is primarily a function of the separation of powers."); *DeSantis*, 306 So. 3d at 1214 (Fla. 1st DCA 2020) (quoting Baker, 369 U.S. at 210).

B. **No Cause of Action for Declaratory Relief Sought by Plaintiff.**

Plaintiff seeks declaratory judgment relief in Counts 1, 3, and 6 under Florida's Declaratory Judgments Act, Chapter 86, Florida Statutes (2023). Compl. ¶¶6, 71, 87, 103. "The purpose of the

declaratory judgment statute is to afford relief from insecurity and uncertainty with respect to rights, status, and other equitable or legal relations, and it should be liberally construed." *Martinez v. Scanlan*, 582 So. 2d 1167, 1169 (Fla. 1991).

When deciding a motion to dismiss for declaratory judgment, the test is not whether the plaintiff will succeed on the merits, but whether the plaintiff is "entitled to a declaration of rights at all." *See X Corp. v. Y. Person*, 622 So. 2d 1098, 1101 (Fla. 2d DCA 1993). Plaintiff alleges that his rights are violated by the Memoranda and directs the Court to review the Charter and Code as the source of those rights. At the hearing, Plaintiff directly asked this Court to interpret the Charter and "determine the parties rights under that law." *See* Hr'g Tr. at 18: 4-9. Plaintiff alleges that the Charter and Code "as currently written, provide [Plaintiff], as councilman, with certain rights." *See* Hr'g Tr. at 20: 9-14.

Plaintiff recognizes that the Charter, Code, and Resolutions are the three types of legislation that "grant councilmembers certain rights and obligations." *See* Resp. at 4-5. Plaintiff's relief, however, is negated by the very sources of law he relies upon and admits apply to him. For example, Charter § 2.02(a)(6) only grants the City Council, not individual councilmembers, the power to inquire or investigate into municipal affairs. Plaintiff's claim that his right as an individual councilmember to conduct such inquiries or investigations is somehow violated by the Memoranda is in conflict with Charter § 2.02(a)(6). In light of this conflict, Plaintiff is not entitled to the declaratory judgment relief he seeks.

Furthermore, to "properly invoke the jurisdiction of the circuit court, the party seeking a declaration must not only show that he is in doubt as to the existence or nonexistence of some right or status, but also that there is a bona fide, actual, present, and practical need for the declaration." *Dep't of Env't Prot. v. Garcia*, 99 So. 3d 539, 544 (Fla. 3d DCA 2011) (internal citations omitted). Here, Plaintiff's allegations fail to meet this standard.

First, there is no doubt as to the "existence or nonexistence" of Plaintiff's rights as a councilmember. The Charter and Code set forth his rights, including those rights of the City Council. The City Council, not the individual councilmember, has the power to conduct an inquiry into a municipal government[4]. *See* Charter § 2.02 (a)(6). The Charter also states that councilmembers "shall deal with city officers and employees, who are subject to the direction and supervision of the mayor, solely through the mayor." Charter § 3.02(b). The Legal Opinions the Plaintiff challenges also reiterate the rights of individual councilmembers. Lastly, Resolution No. 2023-157, adopted by the City Council on November 7, 2023, further affirms the rights of a councilmember. As a result, the governing sources of law contradict the legal conclusions alleged in the Complaint that Plaintiff has been frustrated in his ability to discharge his duties as a councilmember. The complaint must therefore be dismissed.

Plaintiff's dismay with the rights conferred upon him as a councilmember and his inability to garner consensus with other councilmembers to agree with his legislative priorities does not create a "doubt" over his rights. Indeed, the allegations in his Complaint show that Plaintiff has not been prevented from exercising the rights he does posses as a councilmember. As such, Plaintiff cannot plead that he is in doubt as to the existence of his rights. There is no doubt for this Court to clarify, and therefore, regardless of the merits, Plaintiff's allegations do not entitle him to a declaration of his rights. *See X Corp.*, 622 So. 2d at 1101.

Second, there is no bona fide, actual, present, and practical need for the Court to enter a declaration that the Memoranda are invalid. The factual circumstances that gave rise to Plaintiff's allegations in the Complaint also fail to plead any good faith or practical need for the Court to intervene and opine on the validity of the municipality's policies. Indeed, the decisions of who can conduct inquiries, subpoena records, or place items on meeting agendas, are "entirely a legislative function completely independent of judicial intervention." *See Dep't of Env't. Prot.*, 99 So. 3d at 545. Put another way, Plaintiff's Complaint that Mayor Bovo and other councilmembers are

"disinterest[ed] in the issue" Plaintiff wants to pursue, is resolved legislatively not judicially. Compl. ¶ 35.

Therefore, the sought after declaratory relief to resolve Plaintiff's frustration with how City Council and Mayor Bovo "downplayed" an issue is not "judicial in nature" to confer jurisdiction over the dispute. *May v. Holley*, 59 So. 2d 636, 639 (Fla. 1952); *see also* Compl. ¶ 33. There "must exist some justiciable controversy between adverse parties that needs to be resolved from a court to exercise its jurisdiction. Otherwise, any opinion . . . would be advisory only and improperly considered in a declaratory action." *Martinez*, 582 So. 2d at 1171. Accordingly, the allegations are insufficient to "activate jurisdiction" for this Court to issue a declaration on Plaintiff's rights. *See X Corp*., 622 So. 2d at 1101.

C. **Complaint Fails to Join a Necessary and Indispensable Party.**

Plaintiff sued Mayor Bovo in his official capacity as mayor of the City of Hialeah alleging the Memoranda violate the Charter and Code. Indeed the entire Complaint centers around Hialeah's municipal operations and governance, to *wit*: (i) the Charter requirement for Council approval of investigations or inquiries into municipal affairs (Compl. ¶¶ 14, 15, 43 and Charter § 2.02(a)(6)); (ii) the Charter requirement that councilmembers not interfere with the administration of municipal government (Compl. ¶¶ 12, 13, and Charter § 3.02(b)); and (iii) ordinances governing the order of precedence and the manner in which the Council conducts its legislative business (Compl. ¶¶ 26, 54-56, 59; Code §30-31). The effect of these allegations requires the Court to determine the validity of Hialeah's Charter, including Resolution No. 2023-157, which expressly affirms and adopts the policies Plaintiff seeks to invalidate and enjoin. *See* Compl. ¶¶65, 81, 97 (admitting that Plaintiff's rights and obligations as a Hialeah councilmember depend on the Court's interpretation of the Charter and Code).

When an action purports to challenge the validity of its charter or ordinances, Florida law requires that a plaintiff dismiss the incorrectly named party and substitute the municipality as a

party.

> In any proceeding concerning the validity of a county or municipal charter, ordinance, or franchise, such county or municipality shall be made a party and shall be entitled to be heard.

Fla. Stat. § 86.091 (quoted in relevant part, emphasis added). The Complaint incorrectly sues the Mayor and fails to name the City of Hialeah as a party to this lawsuit. The Complaint's failure to join Hialeah as a party requires the dismissal of his Complaint. Fla. R. Civ. P. 1.140(b)(7); *see also Parker v. Parker*, 185 So. 3d 616, 618 (Fla. 4th DCA 2016) ("Indispensable parties are necessary parties so essential to a suit that no final decision can be rendered without their joinder.") (internal citations omitted). Additionally, the crux of Plaintiff's Complaint involved Hialeah's refusal to produce records that belong to the City of Hialeah, not to the Mayor. Compl. ¶¶ 35, 36. The Legal Opinions are also opinions prepared and circulated by Hialeah's City Attorney – not by Mayor Bovo. Compl. ¶¶ 38, 56, 80-81; 89-90; 96; 98; 100; 105. However, even if Plaintiff had joined Hialeah as a party, his Complaint would be dismissed for the reasons otherwise set forth in this Order.

D. **Plaintiff Lacks Standing to Maintain his Suit in an Official Capacity.**

Plaintiff asks this Court to interpret the Charter and Code to issue an opinion on whether his rights are violated by the Memoranda. But "[a]s a general rule, a public official does not have standing to sue for the purpose of determining whether or not the law which sets forth his duties is valid." *Branca v. City of Miramar*, 634 So. 2d 604, 606 (Fla. 1994). "State officers and agencies must presume legislation affecting their duties to be valid, and do not have standing to initiate litigation for the purpose of determining otherwise." *Dep't of Educ. v. Lewis*, 416 So. 2d 455, 458 (Fla. 1982).[5]

There are exceptions to this standing rule where "the objecting party can show that he will be injured in his person, property or other material right by virtue of the statute in question, or where the law requires an expenditure of public funds." *Santa Rosa Cnty. v. Admin. Comm'n, Div.*

of Admin. Hearings, 642 So. 2d 618, 623 (Fla. 1st DCA 1994), *approved in part, disapproved in part*, 661 So. 2d 1190 (Fla. 1995) (internal citations and quotations omitted). Plaintiff does not meet any of these exceptions and therefore lacks standing to bring this suit.

Furthermore, Plaintiff sued Mayor Bovo in his "official capacity as a councilmember for the City of Hialeah." Compl. at 1. His Complaint seeks declaratory relief asking for clarity on the rights of individual councilmembers in relation to those of Mayor Bovo. Plaintiff, however, lacks authority to act on behalf of the entire City Council as he attempts to do so in this action. Moreover, the "governing body of a municipality can act validly only when it sits as a *joint body* at an authorized meeting duly assembled pursuant to such notice as may be required by law; for the existence of the council is *as a board of entity* and the members of the council can do no valid act except as an integral body." *Turk v. Richard*, 47 So. 2d 543, 544 (Fla. 1950) (emphasis in original). Additionally, through Resolution No. 2023-157, the City Council has declared Plaintiff's actions as "ultra-vires" or without legislative authority. As Plaintiff concedes in his Response, municipal resolutions are a source of law that govern the conduct of Hialeah's municipal affairs. Resp. at 4-5. In any event, it is plain from the allegations of the Complaint that Plaintiff acts a single councilmember and not as

E. **The Court Lacks Jurisdiction to Enjoin Hialeah's Legislative Process.**

Plaintiff seeks a permanent injunction prohibiting the enforcement of the Memoranda in Counts 2, 4, and 5. The injunction counts seek to permanently prohibit the internal workings of Hialeah governance, which if granted, would result in the following: (i) removing the prohibition against individual councilmembers' interference with the administration and city departments without Mayor approval; (ii) removing the limitation on individual councilmembers' ability to conduct inquiries or investigations into municipal affairs without City Council approval; and (iii) removing the order of precedence to add items to the agenda for Council meetings. Such relief, however, is outside the bounds of this Court's jurisdiction because it seeks review of the internal

deliberative process of Hialeah's legislative branch which is prohibited by the separation of powers doctrine. As with the other counts in Plaintiff's complaint, the injunctive relief counts similarly request relief from this Court that Plaintiff was not able to obtain by participating in the legislative process.

"Where the Legislature is concerned, it is only the final product of the legislative process that is subject to judicial review." *Florida Senate v. Florida Public Employees Council 79, AFSCME*, 784 So. 2d 404, 408 (Fla. 2001). There is no authority that permits this Court to "issue an order contravening the internal workings of the Legislature." *Id.* at 409. "Clearly, the legislature, commissions, boards, city councils, and executive officers, by their enactment of, or failure to enact, laws or regulations . . . or directives, are acting pursuant to basic governmental functions performed by the legislative or executive branches of government." *Trianon Park Condo. Ass'n, Inc. v. City of Hialeah*, 468 So. 2d 912, 919 (Fla. 1985). Thus the "judicial branch has no authority to interfere with the conduct of those functions unless they violate a constitutional or statutory provision." *Id.*

Florida has a vigorous separation of powers doctrine. *Citizens for Strong Sch., Inc. v. Fla. State Bd. of Educ.*, 232 So.3d 1163, 1170 (Fla. 1st DCA 2017) (acknowledging that the Florida Constitution requires a strict separation of powers between the branches of government). Moreover, the separation of powers doctrine prevents a court from "enter[ing] an injunction prohibiting a legislative act by another branch of government, absent illegality or fraud." *City of Ormond Beach v. City of Daytona Beach*, 794 So. 2d 660, 663 (Fla. 5th DCA 2001) (ruling that "court had no authority to enter an injunction prohibiting a legislative act by another branch of government"). Accordingly, this Court lacks jurisdiction to grant Plaintiff's permanent injunction to the extent that doing so would interfere in the City Council's deliberative legislative process. *See CRSJ, Inc. v. Miami-Dade Cty*., 325 So. 3d 976, 978 (Fla. 3d DCA 2021) (denying injunction for lack of jurisdiction to intervene in ongoing legislative process).

F. **The Complaint Fails to Plead Each Element of Injunctive Relief.**

"To obtain a permanent injunction, a petitioner must establish a clear legal right, an inadequate remedy at law and that irreparable harm will arise absent injunctive relief." *Residences at Bath Club Condo. Ass'n, Inc. v. Bath Club Ent., LLC*, 355 So. 3d 990, 998 (Fla. 3d DCA 2023); (citing *Hollywood Towers Condo. Ass'n, Inc. v. Hampton*, 40 So. 3d 784, 786 (Fla. 4th DCA 2010)).

i. **Complaint Fails to Plead a Legal Right**.

The Complaint must allege that a clear legal right has been violated. *See Springsted Holdings, Inc. v. Del Prado Mall Pro. Condo. Ass'n, Inc.*, 349 So. 3d 939, 942 (Fla. 2d DCA 2022) (finding a clear legal right to parking spaces in the association's governing documents). The "clear legal right" element of an injunction is not met with a "mere colorable claim" to satisfy the injunction requirements. *See Heslop v. Moore*, 716 So. 2d 276, 279 (Fla. 3d DCA 1998).

Here, Plaintiff relies on Charter §§ 2.02(a)(6) and 3.02(b) and Code § 30-31 to support his claim that his rights as councilman were violated. Compl. ¶¶ 75, 91, 107. He fails to identify, however, his "clear legal right" to support an injunction. To the contrary, the language in the Charter and Code he relies on makes clear that he does not have the rights he seeks. Individual councilmembers cannot conduct inquiries into municipal affairs nor can they bypass the Mayor to conduct business with city departments. *See* Charter §§ 2.02(a)(6); 3.02(b). Likewise, Code § 30-31 dictates the ways municipal business may be placed on the meeting agenda prohibiting a single member of City Council to individually control the agenda without the support of his legislative colleagues.

ii. **Complaint Fails to Plead Lack of Adequate Remedy at Law Element.**

"Lack of an adequate remedy at law is a prerequisite for equitable relief." *Liza Danielle, Inc. v. Jamko, Inc.*, 408 So. 2d 735, 738 (Fla. 3d DCA 1982). Adequate remedies at law include the

ability to exercise available legislative procedures and lobby for the desired change. *See CRSJ, Inc.* 325 So. 3d at 981 (explaining that, even if separation of powers did not prevent the injunction, appellants failed to establish a lack of an adequate remedy "as the boundary change procedures provide Appellants with the opportunity to be heard at a public hearing before the County Commission; Appellants may lobby their local representatives to deny the annexation request"). "The determination whether there is an adequate remedy at law turns on the possibility of succeeding, not on its probability." *St. Lucie Cnty. v. Town of St. Lucie Vill.*, 603 So. 2d 1289, 1294 (Fla. 4th DCA 1992). And the "failure to employ an adequate legal remedy at the proper time is not a ground for equitable relief." *Am. Sur. Co. of New York v. Murphy*, 13 So. 2d 442, 443 (Fla. 1943).

Here, there are several remedies available for Plaintiff. First, he could challenge the Charter and Code that form the legal basis for the policies he questions if he thought there was a basis for doing so. Second, he could lobby his fellow councilmembers to adopt his initiatives or use the legislative process as a vehicle to implement the legislative initiatives he has failed to advance. Third, he could file a civil action to compel production of the requested 911 call center records. *See generally* § 119.11, Fla. Stat. (2023).

Moreover, nothing pled in the Complaint alleges the injunction is the only available remedy and conclusory allegations that he has "no adequate remedy at law for his rights and obligations" without any support, fail to sufficiently plead this element. Compl. ¶¶ 74, 90, 106.

iii. **Complaint Fails to Plead Irreparable Harm.**

"[W]hat makes an injury irreparable is that no other remedy can repair it." *Weinstein v. Aisenberg*, 758 So. 2d 705, 708 (Fla. 4th DCA 2000) (Gross, J., concurring specially); *see also Corp. Mgmt. Advisors, Inc. v. Boghos*, 756 So. 2d 246, 247-48 (Fla. 5th DCA 2000) ("Irreparable injury means, in essence, that injunction is the only practical mode of enforcement.").

The complaint must "clearly demonstrate that irreparable injury would follow the denial of the injunction" to survive dismissal. *See City of Coral Springs v. Fla. Nat. Properties, Inc.*, 340 So. 2d 1271, 1272 (Fla. 4th DCA 1976) (dismissing complaint for failure to state a cause of action for injunctive relief); *see also Quadomain Condo. Ass'n, Inc. v. Pomerantz*, 341 So. 2d 1041, 1042 (Fla. 4th DCA 1977) ("The cases are legion which hold that such a general allegation of irreparable harm is insufficient and that a complaint must allege facts tending to show irreparable harm.).

The Complaint fails to set forth any facts for the "extraordinary and drastic remedy" of enjoining the municipality from governing its own affairs. *See Palenzuela v. Dade Cnty.*, 486 So. 2d 12, 13 (Fla. 3d DCA 1986) ("The merits of the claim aside, appellants did not show the necessary prerequisites for the extraordinary and drastic remedy of enjoining the enforcement of a county ordinance."). Nothing in the Complaint alleges how the challenged policies prevent Plaintiff from fulfilling his obligations or that "irreparable injury" would result without the injunction. He merely alleges that the Memoranda prevent him from proceeding in a manner not authorized by the Charter or Code. Compl. ¶¶ 75, 91, 107 (referencing Charter §§ 2.02(a)(6); 3.02(b) and Code § 30-31; and Resolution No. 08-161).

Indeed, there is no conflict between the Charter or the Code and the Memoranda. Plaintiff does not question the validity of the Charter or the Code which govern the conduct of Hialeah's municipal affairs.[6] As a result, it is impossible for Plaintiff to suffer any harm resulting from the Memoranda. In any event, enjoining enforcement of the Memoranda will not give Plaintiff the relief he seeks because the Charter and the Code, not the Memoranda, govern the conduct of municipal affairs.

WHEREFORE, the Court having reviewed the matter and otherwise being fully advised, it is **ORDERED** that the Complaint is dismissed with prejudice.

[1] When I refer to "Legal Opinions" it means the City of Hialeah Law Department Memorandum (LO 2023-1) dated July 18, 2023 and the City of Hialeah Law Department Memorandum (LO 2023-2) dated September 11, 2023 referenced in the Complaint. *See* Comp. ¶¶ 38, 56, 80-81; 89-90; 96; 98; 100; 105.

[2] Section 365.171(12)(a), Florida Statutes, provides that any information obtained by a public agency for the "purpose of providing services in an emergency which reveals the name, address, or telephone number or personal information" is confidential and exempt from Section 119.07(1), Florida Statutes. Plaintiff offers no argument or authority as to how the City or Mayor Bovo are compelled to share with him information that would be unlawful for either to disclose without redactions. To the contrary, Plaintiff admits that the City Council failed to authorize his investigation of these records and did not commit the City's resources to make the records lawfully available to him in a redacted format. Compl. at ¶ 30-33.

[3] Additionally, the Motion requests the Court take judicial notice of the Charter, Code, Resolutions, and Legal Opinions pursuant to Florida Statutes, Section 90.202. *See* Motion at fn.2. Section 90.202 allows this Court to take judicial notice of "all municipal and county charters" along with "enacted ordinances and resolutions of municipalities." *See* § 90.202(8) and (10), Florida Statutes (2023); *see also City of Miami v. F.O.P. Miami Lodge 20*, 571 So. 2d 1309, 1319, n.10 (Fla. DCA 3d 1989), *approved sub nom. Fraternal Ord. of Police, Miami Lodge 20 v. City of Miami,* 609 So. 2d 31 (Fla. 1992) (taking judicial notice of city resolution recognizing that a "city resolution may be judicially noticed") (citing § 90.202(10), Fla. Stat.). Pursuant to Fla. Stat. §90.203, I find that (a) Plaintiff was given timely notice of the request, proof of which was filed with the Court (Mot. at fn.2), to enable Plaintiff to prepare to meet the request; and (b) the Court was furnished with sufficient information to enable it to take judicial notice of the requested matters. To the extent necessary, I therefore take judicial notice of Hialeah's Charter, Code, Resolutions, and Legal Opinions.

[4] As stated in *Woodham v. Blue Cross & Blue Shield, Inc.*, 829 So.2d 891, 898 (Fla.2002): ("'[w]here possible, courts must give full effect to all statutory provisions and construe related statutory provisions in harmony with one another.'") (quoting *Forsythe v. Longboat Key Beach Erosion Control Dist.*, 604 So.2d 452, 455 (Fla.1992). Therefore, it is evident that if a councilmember is not authorized to unilaterally conduct investigations, he cannot be authorized to circumvent the mayor for purposes of conducting unsanctioned investigations.

[5] Plaintiff relies on *Brodeur v. Miami-Dade Cnty*., 81 So. 3d 491 (Fla. 3d DCA 2012) to support his claim for standing. *Brodeur*, however, dealt with allegations that an elected official's vote was nullified and the court was persuaded she had standing because of her "injury in fact." There are no allegations that Plaintiff's votes or any other his legislative actions have been nullified making *Brodeur* inapplicable here.

[6] Plaintiff's Counsel admitted that "we're not saying that any charter is invalid. We're not saying any ordinance is invalid . . .[we're] not attacking the City's charter or the ordinances." *See* Hr'g Tr. at 24:10-20.

DONE and **ORDERED** in Chambers at Miami-Dade County, Florida on this 22nd day of January, 2024.

2023-025197-CA-01 01-22-2024 1:31 PM
Hon. Reemberto Diaz

CIRCUIT COURT JUDGE
Electronically Signed

Final Order as to All Parties SRS #: **12** (Other)

THE COURT DISMISSES THIS CASE AGAINST ANY PARTY NOT LISTED IN THIS FINAL ORDER OR PREVIOUS ORDER(S). THIS CASE IS CLOSED AS TO ALL PARTIES.

Electronically Served:

Physically Served: